

JHON. RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|-----------------------------|---|-----------------------|
| PUGET SOUNDKEEPER ALLIANCE, |) | |
| |) | No. 3:20-cv-06042-RSM |
| Plaintiff, |) | |
| v. |) | CONSENT DECREE |
| |) | |
| CARLILE TRANSPORTATION |) | |
| SYSTEMS, LLC, |) | |
| |) | |
| Defendant. |) | |
| |) | |

I. STIPULATIONS

Plaintiff Puget Soundkeeper Alliance (“Soundkeeper”) sent a sixty-day notice of intent to sue letter to defendant Carlile Transportation Systems, LLC (“Carlile”) on or about August 5, 2020, and filed a complaint on October 22, 2020, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, relating to discharges of stormwater from Carlile’s facility in Tacoma, Washington and seeking declaratory and injunctive relief, civil penalties, and attorneys’ fees and costs.

Soundkeeper and Carlile agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

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SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN ST.
SEATTLE, WASHINGTON 98112
(206) 860-2883

Soundkeeper and Carlile stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding Soundkeeper's claims or allegations set forth in its complaint and its sixty-day notice.

DATED this __th day of June, 2021

MILLER NASH LLP

SMITH & LOWNEY, PLLC

By _____
Donald B. Scaramastra, WSBA #21416
Attorney for Defendant Carlile
Transportation Systems, LLC

By _____
Alyssa Koepfgen, WSBA #46773
Richard A. Smith, WSBA #21788
Savannah Rose, WSBA #57062
Attorneys for Plaintiff
Puget Soundkeeper Alliance

CARLILE TRANSPORTATION SYSTEMS, LLC

PUGET SOUNDKEEPER ALLIANCE

By _____
Terry Howard
President

By _____
Walter S. Tabler
President of Soundkeeper Board of Directors

II. ORDER AND DECREE

THIS MATTER came before the Court upon the Parties' Joint Motion for Entry of Consent Decree and the foregoing Stipulations of the parties. Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Each signatory for the parties certifies for that party that he or she is authorized to enter into the agreement set forth herein.

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1 3. This Consent Decree applies to and binds the parties and their successors and
2 assigns.

3 4. This Consent Decree and any injunctive relief ordered within applies to the
4 operation, oversight, or both by Carlile of its Facility at 2301 Taylor Way, Tacoma, WA 98421
5 (the "Facility"), which is subject to National Pollutant Discharge Elimination System Permit
6 No. WAR301370 (the "NPDES permit").
7

8 5. This Consent Decree is a full and complete settlement and release of all the claims
9 in the complaint and the sixty-day notice. These claims are released and dismissed with prejudice.
10 Plaintiff and its representatives will not encourage others who are not parties to this Consent Decree
11 to assert any of these released claims.

12 6. This Consent Decree is a settlement of disputed facts and law. It is not an admission
13 or adjudication regarding any allegations by Soundkeeper in this case or of any fact or conclusion
14 of law related to those allegations, nor evidence of any wrongdoing or misconduct on the part of
15 Carlile.
16

17 7. Carlile agrees to the following terms and conditions in full and complete satisfaction
18 of all the claims covered by this decree:

19 a. Carlile will comply fully with all conditions of its National Pollutant
20 Discharge Elimination System Permit No. WAR301370 and any successor, modified, or
21 replacement permit authorizing discharges of stormwater associated with industrial activity
22 from the Facility.
23

24 b. For a period of three (3) years after the entry of this Consent Decree, Carlile
25 will, on a quarterly basis, electronically forward to Soundkeeper copies of all
26

1 communications to and/or from Ecology related to its NPDES permit or stormwater
2 discharges from the Facility;

3 c. Carlile will install and have operational the stormwater treatment system
4 proposed and selected in the December 18, 2020 Engineering Report prepared by Vader
5 Engineering and Marx Environmental Consulting, attached hereto as Exhibit 1,
6 according to the timeline set forth in that Engineering Report.
7

8 i. If after the first four consecutive quarters of stormwater sampling
9 after the treatment system has been made operational, the treatment
10 system does not work to lower pollutant levels below NPDES Permit
11 benchmarks in at least three of the four quarters, an engineering review
12 will be conducted by Vader Engineering and Marx Environmental
13 Consulting. Soundkeeper's stormwater expert Dr. Rich Horner will be
14 provided with a draft proposal for stormwater treatment system
15 improvements or adjustments for his review within ten (10) days of the
16 draft proposal's completion and submission to Carlile. Dr. Horner will
17 provide Carlile with any comments or suggestions within fourteen (14)
18 days of receipt of the draft proposal. Carlile will reimburse
19 Soundkeeper's reasonable expenses for its expert's review of the draft
20 proposal up to \$3,000.
21

22
23 d. Within thirty (30) days of entry of this Consent Decree, Carlile will
24 implement the following enhanced sweeping measures: (1) Hire a vacuum sweeping
25 service that uses a regenerative air vacuum sweeper to sweep the paved area of the
26

1 Facility no less than once per month; (2) Implement track-out reduction best
2 management practices (“BMPs”) on the approximately 20-foot-wide strip of land at the
3 Facility that runs along Taylor Way, drainage from which will not flow to the treatment
4 system, including vacuum sweeping the vehicle exits abutting this strip once per month
5 using a regenerative air vacuum sweeper and hand sweeping intermittently as necessary.
6

7 e. To comply with the NPDES Permit requirements regarding inspection
8 report compliance certification, Condition S7.C.1.c, e, and f, Carlile will ensure that
9 both the person conducting the inspection and a duly authorized representative will sign
10 each inspection report and certify on each inspection report whether the facility is in or
11 out of compliance.

12 f. To comply with the NPDES Permit requirement to submit a Solids
13 Monitoring Report to Ecology for the 2015 NPDES Permit cycle, Condition S6.C.2.f,
14 Carlile will submit this report to Ecology as soon as possible but not later than thirty
15 (30) days of entry of this Consent Decree.
16

17 g. Within thirty (30) days of entry of this Consent Decree, Carlile will
18 amend its SWPPP to detail the implementation of the following improvements:

19 i. Carlile’s SWPPP site map will be updated to include the
20 following required components:
21

- 22 a. The size of the property in acres;
- 23 b. Identification of the paved area and unpaved area;
- 24 c. Location of the receiving water;
- 25
- 26

- d. Identification of existing potential soil erosion that could result in the discharge of a significant amount of turbidity, sediment, or other pollutants;
- e. Locations of actual and potential pollutant sources;
- f. The stormwater drainage areas for each stormwater discharge point off site; and
- g. Location of vehicle maintenance areas and buildings.

ii. Carlile's SWPPP facility assessment will include a statement about whether there are seasonal variations in business hours or industrial activities and should include a description of the general layout of the facility including buildings and storage of raw materials and the flow of goods and materials through the facility.

iii. Carlile's SWPPP inventory of materials will include information regarding the potential of the pollutant to be present in stormwater.

iv. The unpaved area of the Facility will be added to the section of the SWPPP identifying "other potential sources" of pollutants.

v. The section of the SWPPP which identifies the BMPs implemented at the facility will describe in detail how and where each BMP will be implemented.

vi. Carlile will incorporate the mandatory (a.k.a. “applicable”) BMPs from the Stormwater Management Manual for Western Washington (“SWMMWW”), Volume IV-1, S454 into the good housekeeping and preventative maintenance BMPs section of the SWPPP.

vii. Carlile will add a clarification about how and where water that is pumped from the potholes is disposed of to the section of its SWPPP regarding illicit discharges.

viii. Carlile will include BMPs in the structural source control BMPs section of the SWPPP for dust control at disturbed land areas and unpaved roadways and parking lots from SWMMWW Volume IV-4, S407.

ix. Carlile will incorporate the planned stormwater treatment system identified in paragraph 7.c of this Consent Decree into the treatment BMPs section of the SWPPP.

8. Within ten (10) days of entry of this Consent Decree, Carlile will pay \$325,000 (THREE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS) to the Rose Foundation for projects to address impairments to, and contribute to the improvement of, the water and/or sediment quality of the Hylebos Waterway, Commencement Bay, and associated reaches of the Puget Sound within 50 miles, as described in Exhibit 2 to this Consent Decree. The checks will be made to the order of The Rose Foundation and delivered to: The Rose Foundation, 201 4th Street, Suite 102, Oakland, CA 94607. Payment will include the following reference in a cover letter or

1 on the check: "Consent Decree, Soundkeeper v. Carlile Transportation Systems, LLC, W.D. Wash.
 2 No. 3:20-cv-06042-RSM." A copy of the checks and cover letters, if any, will be sent
 3 simultaneously to Soundkeeper and its counsel.

4 9. Within ten (10) days of entry of this Consent Decree by the Court, Carlile will
 5 pay \$25,000 (TWENTY-FIVE THOUSAND DOLLARS) dollars to cover Soundkeeper's
 6 litigation fees, expenses, and costs (including reasonable attorney and expert witness fees) by
 7 check payable and mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112,
 8 attn: Richard Smith. Carlile's payment will be in full and complete satisfaction of any claims
 9 Soundkeeper has or may have, either legal or equitable, and of any kind or nature whatsoever,
 10 for fees, expenses, and costs incurred in the Litigation.
 11

12 10. Within ten (10) days of entry of this Consent Decree, Carlile will pay to
 13 Soundkeeper a total of \$7,000 (SEVEN THOUSAND DOLLARS) for costs and fees associated
 14 with monitoring Carlile's compliance with this Consent Decree through the termination date of
 15 the Consent Decree. The total compliance monitoring fund payment will be made payable to
 16 Soundkeeper and mailed to Puget Soundkeeper Alliance, 130 Nickerson Street, Suite 107,
 17 Seattle, WA 98109, attn: Operations Director, Julie Angell.
 18

19 11. A force majeure event is any event outside the reasonable control of Carlile that
 20 causes a delay in performing tasks required by this decree that cannot be cured by due diligence.
 21 Delay in performance of a task required by this decree caused by a force majeure event is not a
 22 failure to comply with the terms of this decree, provided that Carlile timely notifies
 23 Soundkeeper of the event; the steps that Carlile will take to perform the task; the projected time
 24 that will be needed to complete the task; and the measures that have been taken or will be taken
 25
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1 to prevent or minimize any impacts to stormwater quality resulting from delay in completing
2 the task.

3 12. Carlile will notify Soundkeeper of the occurrence of a force majeure event as soon
4 as reasonably possible but, in any case, no later than fifteen (15) days after Carlile becomes aware
5 of the event. In such event, the time for performance of the task will be extended for a reasonable
6 period of time following the force majeure event.
7

8 By way of example and not limitation, force majeure events include

- 9 a. Acts of God, war, insurrection, or civil disturbance;
- 10 b. Earthquakes, landslides, fire, floods;
- 11 c. Actions or inactions of third parties over which defendant has no control;
- 12 d. Unusually adverse weather conditions;
- 13 e. Restraint by court order or order of public authority;
- 14 f. Strikes;
- 15 g. Any permit or other approval sought by Carlile by a government authority to
16 implement any of the actions required by this Consent Decree where such
17 approval is not granted or is delayed, and where Carlile has timely and in
18 good faith sought the permit or approval; and
19
20 h. Litigation, arbitration, or mediation that causes delay.
21

22 13. This Court retains jurisdiction over this matter. And, while this Consent Decree
23 remains in force, this case may be reopened without filing fee so that the parties may apply to the
24 Court for any further order that may be necessary to enforce compliance with this decree or to
25 resolve any dispute regarding the terms or conditions of this Consent Decree. In the event of a
26

1 dispute regarding implementation of, or compliance with, this Consent Decree, the parties must
 2 first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures
 3 for resolving the dispute. Such a meeting should be held as soon as practical but must be held within
 4 thirty (30) days after notice of a request for such a meeting to the other party and its counsel of
 5 record. If no resolution is reached at that meeting or within thirty (30) days of the Notice, either
 6 party may file a motion with this Court to resolve the dispute. The provisions of section 505(d) of
 7 the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including
 8 reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, will
 9 apply to any proceedings seeking to enforce the terms and conditions of this Consent Decree.
 10

11 14. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment
 12 can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five
 13 (45) days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney
 14 General and the Administrator of the U.S. EPA. Therefore, upon the filing of this Consent Decree
 15 by the parties, Soundkeeper will serve copies of it upon the Administrator of the U.S. EPA and the
 16 Attorney General.
 17

18 15. This Consent Decree will take effect upon entry by this Court. It terminates three
 19 years after that date, or upon completion of all obligations imposed by Section 7(c)(i) of this
 20 Consent Decree, whichever is later.
 21

22 16. Both parties have participated in drafting this Consent Decree.

23 17. This Consent Decree may be modified only upon the approval of the Court.

24 18. If for any reason the Court should decline to approve this Consent Decree in the
 25 form presented, this Consent Decree is voidable at the discretion of either party. The parties agree
 26

1 to continue negotiations in good faith to cure any objection raised by the Court to entry of this
2 Consent Decree.

3 19. Notifications required by this Consent Decree must be in writing. The sending party
4 may use any of the following methods of delivery: (1) personal delivery; (2) registered or certified
5 mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized
6 overnight courier, with all fees prepaid; or (4) email. For a notice or other communication regarding
7 this decree to be valid, it must be delivered to the receiving party at the one or more addresses listed
8 below or to any other address designated by the receiving party in a notice in accordance with this
9 paragraph 19.
10

11 **If to Soundkeeper:**

12 Katelyn Kinn
13 Puget Soundkeeper Alliance
14 130 Nickerson Street, Suite 107
15 Seattle, WA 98109
Email: katelyn@pugetsoundkeeper.org

16 **And to:**

17 Alyssa Englebrecht
18 Richard Smith
19 Smith & Lowney PLLC
20 2317 East John St.
Seattle, WA 98112
email: alyssa@smithandlowney.com, richard@smithandlowney.com

21 **If to Carlile:**

22 Carlile Transportation Systems, LLC
23 1800 East 1st Ave, Anchorage, AK 99501
24 Attn: Paul Millwood
pmillwood@carlile.biz

25 **And to:**
26

Donald B. Scaramastra
Miller Nash LLP
2801 Alaskan Way, Suite 300
Seattle, WA 98121
don.scaramastra@millernash.com

A notice or other communication regarding this Consent Decree will be effective when received unless the notice or other communication is received after 5:00 p.m. on a business day, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day. A notice or other communication will be deemed to have been received: (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver; or (c) for notice provided by e-mail, upon receipt of a response by the party providing notice or other communication regarding this Consent Decree.

DATED this 13th day of August, 2021.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

1 Presented by:

2 MILLER NASH LLP

3 SMITH & LOWNEY PLLC

4 By s/Donald Scaramastra
5 Donald B. Scaramastra, WSBA #21416
6 Attorney for Defendant Carlile
7 Transportation Systems, LLC

8 By s/Alyssa Koepfgen
9 Alyssa Koepfgen, WSBA #46773
10 Richard A. Smith, WSBA #21788
11 Savannah Rose, WSBA #57062
12 Attorneys for Plaintiff
13 Puget Soundkeeper Alliance

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